

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/07/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000680

FILED: _____

STATE OF ARIZONA

ROBERT S HUBBARD

v.

JARRETT LEE SIMPSON

JEREMY PHILLIPS

DISPOSITION CLERK-CSC
FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC
TEMPE CITY COURT

MINUTE ENTRY

TEMPE CITY COURT

Cit. No. 1115013

Charge: A. D.U.I
B. DRIVING WITH BAC OVER .10
D. EXCESSIVE SPEED

DOB: 11/16/78

DOC: 10/21/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the time of oral argument on April 8, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Tempe City Court, and the Memoranda submitted by counsel, and the oral argument presented on April 8, 2002.

The only issue raised by the Appellant concerns the admissibility of expert testimony concerning variable breath-to-blood ratios. On the day of trial, the State filed a Motion in Limine requesting that the trial judge preclude any evidence by the Appellant concerning variable breath-to-blood ratios. The trial court granted this motion.

The ruling of the trial judge granting the State's Motion in Limine precluding any evidence of variable breath-to-blood ratios was in error as to Count 1. The Arizona Court of Appeals in Guthrie v. Jones¹ has held specifically that breath-to-blood partition ratios are not relevant to the "per se" DUI charge found in A.R.S. Section 28-1381(A)(2); however, they are relevant and admissible evidence in the "traditional" DUI charge found in A.R.S. Section 28-1381(A)(1). In Guthrie, the Court of Appeals found that the Municipal Court erred in precluding Guthrie's proffered evidence concerning his breath-to-blood partition ratio.

On the basis of the Guthrie² opinion, this Court must reverse Appellant's conviction on Count 1.

IT IS THEREFORE ORDERED reversing the trial court's order granting the State's Motion in Limine as it applies to Count 1.

IT IS FURTHER ORDERED reversing the judgment of guilt and sentence imposed (as to Count 1 only).

¹ ____ Ariz. ____ 43 P.3d 601 (App. 2002).

² Id.

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IT IS FURTHER ORDERD remanding Count 1 for a new trial
consistent with this opinion.

IT IS ORDERED affirming the judgment of guilt and sentence
as to Count 2 (Driving with a Blood Alcohol Content in Excess of
.10) and Count 4 (Excessive Speed).

IT IS FURTHER ORDERED remanding those charges back to the
Tempe City Court for all future and further proceedings.